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No. 91-998

In the Supreme Court of the United States

OCTOBER TERM, 1991

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

NADER E. SOLIMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether an office maintained by a self-employed person in his residence qualifies as his "principal place of business" under Section 280A of the Internal Revenue Code, 26 U.S.C. 280A—and the expenses related to that area of his home are therefore deductible in computing his taxable income—if he spends a greater part of his working time elsewhere, performing the services from which his income is derived.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 935 F.2d 52. The opinion of the Tax Court (Pet. App. 12a-41a) is reported at 94 T.C. 20.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 1991. A petition for rehearing with a suggestion for rehearing *en banc* was denied on August 22, 1991, with three judges dissenting (Pet. App. 44a-45a). On November 6, 1991, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including December 20, 1991. The petition was filed on December 19, 1991, and was

granted on March 23, 1992. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 280A of the Internal Revenue Code, 26 U.S.C. 280A, provides in pertinent part:

> **(a) General rule**
>
> Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an S corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.
>
> * * * * *
>
> **(c) Exception for certain business or rental use; limitation on deductions for such use**
>
> (1) *Certain business use*
>
> Subsection (a) shall not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis—
>
> (A) [as] the principal place of business for any trade or business of the taxpayer.
>
> * * * * *

STATEMENT

1. Respondent is a self-employed anesthesiologist. During 1983, respondent practiced his profession at Suburban Hospital in Bethesda, Maryland, at Shady Grove Hospital in Rockville, Maryland, and at Loudoun Memorial Hospital in Leesburg, Virginia, where he administered anesthesia to patients, cared for patients immediately after surgery, and treated

patients for pain. He spent thirty to thirty-five hours per week engaged in his practice at those hospitals. Approximately 80% of that time (or about 24 to 28 hours each week) was spent at Suburban Hospital. None of the hospitals provided respondent with a personal office (Pet. App. 2a).

Respondent used a spare bedroom in his residential condominium in McLean, Virginia, as an office, where he kept patient records, correspondence, billing records, medical journals and texts. The room was furnished with a desk, chair, couch, telephone, answering machine, copier and file cabinet. Respondent never treated patients in the home office, but he spent two to three hours a day there, where he spoke on the telephone with surgeons, patients, and hospitals, kept records, prepared for treatments and presentations, satisfied continuing medical education requirements and kept abreast of advances in anesthesiology (Pet. App. 2a-3a, 14a; C.A. App. 14-15).

On his federal income tax return for 1983, respondent claimed deductions for condominium fees, utilities, and depreciation attributable to the home office. He also claimed deductions for expenses incurred in driving between his residence and the hospitals, including depreciation on his personal automobile (Pet. App. 14a-15a).[1] The Commissioner of

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[1] Respondent deducted the automobile expenses on the theory that, if his home office is his "principal place of business," his expenses in traveling between that office and the three hospitals where he administered anesthesia to patients constitute ordinary and necessary business expenses under Section 162 of the Code, 26 U.S.C. 162. If his home does not qualify as his principal place of business under Code Section 280A, these travel costs would be non-deductible commuting expenses. See *Fausner* v. *Commissioner*, 413 U.S. 838 (1973) (per curiam).

Internal Revenue disallowed these deductions because respondent's home office was not his "principal place of business" within the meaning of Section 280A of the Internal Revenue Code, 26 U.S.C. 280A (Pet. App. 3a, 14a-15a).

2. Respondent filed a petition in the Tax Court seeking review of the resulting income tax deficiency (Pet. App. 1a).[2] In a reviewed decision, a divided Tax Court concluded that respondent's home office was his "principal place of business" within the meaning of Section 280A. The Tax Court majority noted that it previously had regarded what it termed the "focal point" of a taxpayer's business—the place where goods and services are provided to customers and revenues are generated—as his "principal place of business" (Pet. App. 18a; see, *e.g.*, *Baie* v. *Commissioner*, 74 T.C. 105 (1980)). The court concluded that, under the "focal point" test, respondent's office

[2] Respondent also sought review of additional deficiencies resulting from (i) the Commissioner's disallowance of business expense deductions respondent claimed for family trips to the Virgin Islands and to Orlando, Florida and (ii) the Commissioner's inclusion of approximately $31,000 of income that respondent failed to report on his income tax return. The Tax Court sustained the disallowance of respondent's deduction for the purported business trips, finding the trips to be "predominantly personal family vacations" (Pet. App. 25a). The court also determined that respondent had failed to report $29,857 of his taxable income, part of which had been reported on a different return "and $17,425 of which was completely omitted" from any return (*id.* at 26a). As a result of these determinations, the court found respondent liable for deficiencies in tax and for a 25% addition to tax under former Section 6661 due to his "substantial understatement of income tax" (26 U.S.C. 6661(a) (1988)). See Pet. App. 26a-27a. Respondent did not appeal these rulings. See *id.* at 1a n.1.

at home was *not* his "principal place of business" because the activities respondent performed at home, while "essential to his medical practice" (Pet. App. 18a), were "ancillary to the primary income-generating services [respondent] performed as an anesthesiologist at the hospitals" (*ibid.*).

The Tax Court majority stated (Pet. App. 18a), however, that the validity of the "focal point" test had been questioned by the courts of appeals in three cases that reversed Tax Court decisions holding that the taxpayer's home office was not his "principal place of business." See *Drucker* v. *Commissioner*, 715 F.2d 67 (2d Cir. 1983); *Weissman* v. *Commissioner*, 751 F.2d 512 (2d Cir. 1984); *Meiers* v. *Commissioner*, 782 F.2d 75 (7th Cir. 1986). The court concluded that it would therefore no longer follow the "focal point" test and would instead look to the individual "facts and circumstances" of the taxpayer to determine whether his home office was his principal place of business (Pet. App. 19a). In articulating the meaning of its new test, however, the court stated, as a general rule, that it would regard a taxpayer's office at home as his "principal place of business" within the meaning of Section 280A when the "taxpayer's home office is essential to his business, he spends substantial time there, and there is no other location available to perform the office functions of the business" (Pet. App. 24a). The court held that respondent's home office satisfied that standard, and thus qualified as his principal place of business, even though respondent spent a greater part of his working time at Suburban Hospital, where he performed his most important work (*id.* at 23a).

Chief Judge Nims dissented, joined by Judges Chabot, Parker, Clapp and Parr. He pointed out that, in

the three court of appeals decisions upholding home-office deductions, the most important factor "was that the taxpayer spent the majority of his or her business time at the 'home office,' rather than at the place where goods or services were provided to customers or clients or where income is produced" (Pet. App. 28a). Chief Judge Nims criticized the analysis of the Tax Court majority because it failed to engage in the required comparison between the home office and other places where the taxpayer carried on his business to determine which is *the* principal place of his business (*id.* at 29a-30a). The Chief Judge asserted that "the majority has substituted" a new phrase—"important place of business"—for the statutory phrase—"the principal place of business" (26 U.S.C. 280A(c)(1)(A))—that Congress enacted (Pet. App. 30a). Moreover, Chief Judge Nims stated that the majority's analysis ignores the very reason that Section 280A was enacted: it "takes us all the way back to square one; i.e., to the situation which existed even before Congress took what it thought would be the remedial action of section 280A" (Pet. App. 29a).

Judge Rüwe dissented in a separate opinion, joined in by Chief Judge Nims and Judges Clapp and Parr. Judge Rüwe pointed out that, when a taxpayer performs his trade or business at more than one location, the Commissioner and the courts must compare the relative importance of the various locations where the taxpayer works in order to determine which is the dominant, or "principal," place of the taxpayer's business (Pet. App. 31a). By contrast, the test adopted by the Tax Court majority "eliminates the need to compare the importance of home office activities with the importance of activities at the other place of business or to compare the amount of time spent at the

home office with the amount of time spent at the other place of business" (*id.* at 32a). In his view, the taxpayer's "principal place of business" is the place where the "dominant portion of his work is accomplished" (*id.* at 37a (quoting *Weissman* v. *Commissioner*, 751 F.2d at 514)). Judge Rüwe concluded that the Tax Court majority erred by failing to make "a specific qualitative determination that the home office activities were at least as important to the taxpayer's business as the activities performed away from the home office" (Pet. App. 36a). Judge Rüwe also observed that the decision in this case conflicts with *Pomarantz* v. *Commissioner*, 867 F.2d 495, 496 (9th Cir. 1988), where the court of appeals held that the "principal place of business" of an emergency room physician was the hospital where the physician spent the majority of his working time and performed the most important tasks of his profession (Pet. App. 37a-39a).

3. A divided court of appeals affirmed. The majority stated (Pet. App. 4a-5a n.2) that the Tax Court's "focal point" approach had been criticized in *Drucker*, *Weissman* and *Meiers*. The court concluded that the new test adopted by the Tax Court in this case "does not eviscerate the requirements of section 280A, but simply replaces the inflexible and potentially unjust 'focal point' test" with a standard that "more accurately reflects the purposes and requirements of section 280A" (Pet. App. 6a (footnote omitted)). The court also stated that the test adopted by the Tax Court in this case is consistent with Proposed Treas. Reg. § 1.280A-2(b)(3), which would allow traveling salesmen to deduct "home office" expenses even though they spent most of their time on the road, provided that they spend a substantial

amount of time doing paperwork at home (Pet. App. 5a-6a). Although the court acknowledged that the proposed regulation was not binding on the Commissioner or on the courts (*id.* at 6a), it concluded that the proposal "does evince a policy to allow 'home office' deductions for taxpayers who maintain 'legitimate' home offices, even if the taxpayer does not spend a majority of his time in the office" (*ibid.*).

Judge Phillips dissented. In his view, the majority's analysis "eliminates any need for comparing a taxpayer's use of several business locations to determine which constituted his 'principal place of business'" (Pet. App. 8a). He observed that "the term 'principal place of business' compels an inquiry directed to that specific question—which is the *one* that is 'principal.' Otherwise Congress could have used language such as 'essential place of business' or 'necessary place of business'" (*ibid.*). Judge Phillips concluded that the approach adopted by the majority "avoids what I think a fair application of § 280A(c)(1)(A) flatly compels: a comparison of the uses of multiple business locations to determine which is *the* principal place of business of a taxpayer" (*id.* at 10a). Judge Phillips noted that all other decisions upholding deductions for home office expenses involved "situations where the taxpayer spent the majority of his time in his home office, or did his most important work there, or both" (*id.* at 8a). Judge Phillips concluded (*ibid.*) that the court should have followed *Pomarantz* v. *Commissioner*, 867 F.2d at 497-498, where an emergency care physician's deduction of "home office" expenses was disallowed because the hospital—not the home—was the physician's *principal* place of business.

SUMMARY OF ARGUMENT

Section 280A(c)(1)(A) of the Internal Revenue Code allows a deduction for the expenses of maintaining a home office only when that office is "the principal place" of the taxpayer's business. The courts below erred in concluding (Pet. App. 5a, 24a) that a home office meets this standard if the office is "essential" to the business, the taxpayer spends a "substantial" amount of time there, and there is no other location available to perform these office functions. The statute does not allow a taxpayer to deduct home office expenses when the home is "the principal *office* of the business;" instead, it allows the deduction only when the home office is "the principal *place* of business" (26 U.S.C. 280A(c)(1)(A) (emphasis added)).

In determining which of several business locations is "the principal place of business," it is necessary to conduct a comparative analysis of the time spent, and the importance of the activities performed, at each of the locations. In terms of both time spent and the importance of the business activities conducted, respondent's principal place of business was at Suburban Hospital, where he spent the largest segment of his working time and performed his important income-producing tasks of providing professional services to his patients.

ARGUMENT

RESPONDENT'S HOME OFFICE WAS NOT HIS "PRINCIPAL PLACE OF BUSINESS"

A. The Cost Of Maintaining A Home Office May Be Deducted If The Office Is The "Principal Place Of Business For Any Trade Or Business Of The Taxpayer"

1. *The Statutory Scheme.* Section 162(a) of the Internal Revenue Code generally allows a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." 26 U.S.C. 162(a). The deductions that may be permitted by Section 162(a), however, are limited by other provisions of the Code. See 26 U.S.C. 161, 261; *Commissioner* v. *Idaho Power Co.*, 418 U.S. 1, 17 (1974). For example, an expense that might qualify as a business expense is nonetheless not deductible if it constitutes a "personal, living, or family expense[]" within the meaning of Section 262(a) of the Code. See 26 U.S.C. 261, 262(a). Expenses such as the costs of maintaining a household (26 C.F.R. 1.262-1(b)(3)) and of commuting to work (*Fausner* v. *Commissioner*, 413 U.S. 838 (1973) (per curiam)) are prominent examples of such nondeductible personal expenditures.

Section 280A of the Code is specifically designed to limit the deduction of business expenses attributable to maintaining a personal residence. It states, as a general rule, that "[e]xcept as otherwise provided in this section, * * * no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by a taxpayer * * * as a residence." 26 U.S.C. 280A(a).[3] Limited exceptions to this general rule of nondeductibility are provided in Section 280A(c). For example, when a taxpayer is engaged in the business of selling products at retail, Section 280A(c)(2) permits a deduction for expenses attributable to space "used on a regular basis as a storage unit for the inventory of the taxpayer * * *, but only if the dwelling unit is the sole fixed location of such trade or business." Deductions are also permitted for expenses attributable to certain rental use of a residence (Section 280A(c)(3) and (e)) and for use of the home in providing day care services (Section 280A(c)(4)). And, Section 280A(c)(1)—the provision at issue in this case—allows a deduction for expenses "allocable to a portion of the dwelling unit which is exclusively used on a regular basis" (i) as "the principal place of business for any trade or business of the taxpayer," (ii) "as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business," or (iii) in the case of "a separate structure * * * not attached to the dwelling unit, in connection with the taxpayer's trade or business." 26 U.S.C. 280A(c)(1)(A)-(C).[4]

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[3] Section 280A(b) excepts from this prohibition deductions for expenses (such as qualified mortgage interest (Section 163), property taxes (Section 164) and casualty losses (Section 165(c)(3)) that would be deductible under the Code without regard to their connection to the taxpayer's trade or business or to any income-producing activity.

[4] For employees who claim "home office" deductions, Section 280A(c)(1) further limits the deduction to situations where the business use is "for the convenience of his employer." 26 U.S.C. 280A(c)(1). For both employees and the self-employed, the amount deductible under Section 280A is lim-

2. *The Origin of Section 280A.* Section 280A was enacted as part of the Tax Reform Act of 1976, Pub. L. No. 94-455, § 601, 90 Stat. 1520. The statute was Congress's response to the "great need for definitive rules * * * as to the correct standard governing the deductibility of expenses attributable to the maintenance of an office in the taxpayer's personal residence" (H.R. Rep. No. 658, 94th Cong., 1st Sess. 160 (1975); S. Rep. No. 938, 94th Cong., 2d Sess. 147 (1976)).

Prior to enactment of the statute, the deduction of "home office" expenses had been permitted under Section 162 whenever the expenses were determined to be "appropriate and helpful" to the taxpayer's business. See, *e.g.*, *Newi* v. *Commissioner*, 432 F.2d 998 (2d Cir. 1970); *Bodzin* v. *Commissioner*, 60 T.C. 820 (1973), rev'd, 509 F.2d 679 (4th Cir.), cert. denied, 423 U.S. 825 (1975); *Hall* v. *United States*, 387 F. Supp. 612 (D.N.H. 1975); *Gill* v. *Commissioner*, 34 T.C.M. (CCH) 10 (1975). Congress was concerned that "[i]n many cases the application of the appropriate and helpful test would appear to result in treating personal, living, and family expenses which are directly attributable to the home (and therefore not deductible) as ordinary and necessary business expenses, even though those expenses did not result in additional or incremental costs incurred as a result of the business use of the home" (H.R. Rep. No. 658, *supra*, at 160; S. Rep. No. 938, *supra*, at 147). Congress disapproved of the results obtained under the "appropriate and helpful" standard be-

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ited to the excess of the gross income derived from the business use of the residence over the deductions that would be allowable without regard to such business use. 26 U.S.C. 280A(c)(5).

cause "expenses otherwise considered nondeductible personal, living, and family expenses might be converted into deductible business expenses simply because, under the facts of the particular case, it was appropriate and helpful to perform some portion of the taxpayer's business in his personal residence" (H.R. Rep. No. 658, *supra*, at 160; S. Rep. No. 938, *supra*, at 147).

Congress recognized that it was extremely difficult to draw distinctions between business and personal uses of a residence under the "appropriate and helpful" standard and was reluctant to require that such distinctions be drawn on a case-by-case basis.[5] In enacting Section 280A, Congress intended to eliminate the "subjective determination" inherent in the "appropriate and helpful" standard in favor of the "definitive rules" prescribed in Section 280A. H.R. Rep. No. 658, *supra* at 160; S. Rep. No. 938, *supra*, at 147.

One of the "definitive rules" that Congress adopted is Section 280A(c)(1)(A), which precludes the deduction of "home office" expenses when the home office is not "the principal place of business for any trade or

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[5] The "appropriate and helpful" standard "increases the inherent administrative problems because both business and personal uses of the residence are involved and substantiation of the time used for each of these activities is clearly a subjective determination" (H.R. Rep. No. 658, *supra*, at 160). The more stringent, objective standards for deductibility contained in Section 280A were intended not only to relieve the IRS of the administrative burdens required to implement the "appropriate and helpful" standard, but also to preclude deduction of inherently personal expenditures in situations where the taxpayer's business use of the home resulted only in "minor incidental expenses" (H.R. Rep. No. 658, *supra*, at 160).

business of the taxpayer." 26 U.S.C. 280A(c)(1)(A). Although the Senate proposed an amendment to this provision that would have allowed a deduction for "home office" expenses whenever "the employer provides no office or fixed location for the use of the employee" (S. Rep. No. 938, *supra*, at 148), that proposal was rejected in conference (S. Rep. No. 1236, 94th Cong., 2d Sess. 435 (1976)).

B. A Taxpayer Who Spends a Greater Part Of His Working Time Performing The Income-Earning Activities Of His Employment At Another Location Cannot Claim His Home Office As His "Principal Place of Business"

Recognizing that Section 280A was enacted to overrule decisions that had liberally permitted the deduction of expenses attributable to the maintenance of offices in personal residences, courts have concluded that Section 280A "imposes a heavy burden upon taxpayers to establish that their 'home office' expenses meet its stringent standards for deductibility" (*Meiers* v. *Commissioner*, 782 F.2d at 77; see *Pomarantz* v. *Commissioner*, 867 F.2d at 496). The standard that the taxpayer failed to meet in this case is the requirement that his home office be "the principal place of business" for his trade or profession (26 U.S.C. 280A(c)(1)(A)).

We do not dispute that respondent's home office was "exclusively used on a regular basis" in performing certain administrative tasks that were necessary and appropriate to his practice of anesthesiology (Pet. App. 17a). That, however, does not suffice to establish that the spare bedroom in his condominium, which was used as a home office, was "the principal

place of business" for his medical practice, as the statute requires. See 26 U.S.C. 280A(c)(1)(A).[6]

1. The determination of the taxpayer's "principal place of business" necessarily requires a comparison of the relative importance of the taxpayer's various places of business

The "starting point in every case involving construction of a statute is the language itself." *Greyhound Corp.* v. *Mt. Hood Stages, Inc.*, 437 U.S. 322, 330 (1978). The meaning of the phrase "the principal place of business" is not elaborated in the statute or its legislative history. It is well established, however, that "'the words of statutes—including revenue acts—should be interpreted where possible in their ordinary, everyday senses'" (*Malat* v. *Riddell*, 383 U.S. 569, 571 (1966) (quoting *Crane* v. *Commissioner*, 331 U.S. 1, 6 (1947))). See also *Hanover Bank* v. *Commissioner*, 369 U.S. 672, 687 (1962); *Commissioner* v. *Korell*, 339 U.S. 619, 627-628 (1950); *Old Colony R.R.* v. *Commissioner*, 284 U.S. 552, 560 (1932). The ordinary meaning of the word "principal" is the "first or highest in rank, importance, value * * * chief, foremost." *Random House Dictionary of the English Language* 1539 (2d

[6] Respondent never met with or treated patients at his home office. The office was thus not "a place of business * * * used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business" within the meaning of Section 280A(c)(1)(B). See *Green* v. *Commissioner*, 707 F.2d 404, 406 (9th Cir. 1983); *Cousino* v. *Commissioner*, 679 F.2d 604 (6th Cir.), cert. denied, 459 U.S. 1038 (1982). The home office also was not loctaed in "a separate structure which is not attached to the dwelling unit" and therefore could not qualify for a deduction under Section 280A(c)(1)(C).

ed. 1987).[7] The word is similarly defined in *Black's Law Dictionary* 1355 (4th ed. 1968) to mean:

> Chief; leading; most important or considerable; primary; original. Highest in rank, authority, character, importance or degree.

When a taxpayer conducts business at more than one location, the determination of which is "*the* principal place of business" thus necessarily requires a comparison of the functions performed, and the time spent, by the taxpayer at the various locations to determine which is the "chief," "most important" or "dominant" location of the business (*Weissman* v. *Commissioner*, 751 F.2d at 514).[8] Until it issued its decision in this case, the Tax Court sought to locate the taxpayer's "principal place of business" by determining the "focal point" of the activities of the business. That test emphasized the location where goods and services are provided and where income is generated in the conduct of the business. See *Baie* v. *Commissioner*, 74 T.C. at 109-110.[9] The Second

[7] See also *Malat* v. *Riddell*, 383 U.S. at 572 (the term "primarily" as used in Section 1221(1) of the Internal Revenue Code "means 'of first importance' or 'principally' ").

[8] Under the analogous language of 28 U.S.C. 1332(c)(1), which treats a corporation for diversity jurisdiction purposes as a citizen of "the State where it has its principal place of business" (*ibid.*), there can be "only *one* principal place of business," even when the business is a "far flung" enterprise (1 *Moore's Federal Practice* ¶ 0.77[1.-2], at 800.82 (2d ed. 1992)). See also notes 12, 13, *infra*.

[9] The Tax Court's "focal point" approach is illustrated by its decision in *Baie* v. *Commissioner*, 74 T.C. at 108-110. The taxpayer in *Baie* operated a hot dog stand. Due to limited space at the stand, she prepared food for the stand in her kitchen. She also used a spare bedroom in her house to keep books and records for the stand. The Tax Court concluded that the hot dog stand was the "focal point" of her activities, and therefore her "principal place of business," because the stand was the place where she provided goods and services to customers and generated income. *Id.* at 109. Although the kitchen was plainly *a* place used for her business, that did not suffice to establish that her kitchen was "the principal place of [her] business," as the statute requires. As the court stated in that case, "[w]e are not * * * at liberty to 'bend' the law, much as we may sympathize with [the taxpayer's] position." *Id.* at 110.

and Seventh Circuits have acknowledged that these factors are significant, but have also required that consideration be given to the *time* spent by the taxpayer at each location and the significance of the functions performed at each. See *Meiers* v. *Commissioner*, 782 F.2d at 79; *Weissman* v. *Commissioner*, 751 F.2d at 514; *Drucker* v. *Commissioner*, 715 F.2d at 69.

For example, in *Drucker* v. *Commissioner*, the Second Circuit concluded that home practice rooms maintained by members of the Metropolitan Opera orchestra were the musicians' principal places of business. The court rejected the Tax Court's conclusion that the principal place of the musicians' business was Lincoln Center, where they performed, because "[b]oth in time and in importance, home practice was the 'focal point' of the appellant musicians' employment-related activities." 715 F.2d at 69. In *Weissman* v. *Commissioner*, the Second Circuit concluded that "the principal place of business" of a college professor was his home office, where he spent "a majority of his working time." 751 F.2d at 516. The court rejected the Tax Court's conclusion that the taxpayer's profession was centered in the classroom.

Ibid.[10] In *Meiers* v. *Commissioner*, the Seventh Circuit disagreed with the Tax Court's finding that "the principal place of business" of a laundromat manager was the laundromat. In the court's view, the home office where the manager worked was, "in terms both of hours worked and probably of functions performed," the taxpayer's "principal place of business." 782 F.2d at 79.[11] Finally, in *Pomarantz* v. *Commissioner*, the Ninth Circuit held, "[w]ithout adopting a specific standard," that the "principal place of business" of an emergency room physician was the hospital where he worked, and not his office at home. 867 F.2d at 497. The court looked to the place where the taxpayer "consistently spen[ds] more time on duty," where he exercises the skills constituting "[t]he essence of his profession," and where he "generate[s] income" (867 F.2d at 497-498).

The common logical thread that connects these decisions is that a taxpayer's "principal place of business" must be determined by a comparison of the significance of, and the time devoted to, the activities conducted at each place of business. This comparison must be made so that the *one* principal place of business can be determined. It is this principle, which the statute directly invokes, that the Tax Court and the court of appeals failed to follow in the present case.

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[10] The court also found that the "convenience of the employer" requirement was met because "the employer provided [the taxpayer] no *suitable* space for engaging in necessary employment-related activities." 751 F.2d at 516-517.

[11] The court stated in *Meiers* that, "[i]n determining the taxpayer's principal place of business, we think a major consideration ought to be the length of time the taxpayer spends in the home office as opposed to other locations." 782 F.2d at 79.

Although the Tax Court stated in this case that it would consider the "facts and circumstances" of each case to determine whether the home office was the taxpayer's principal place of business (Pet. App. 19a), it then announced, as a general rule, that a home office may qualify as "the principal place of business" within the meaning of Section 280A when the (Pet. App. 24a)

> taxpayer's home office is essential to his business, he spends substantial time there, and there is no other location available to perform the office functions of the business.[12]

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[12] The Tax Court described the taxpayer's home office in this situation as the "headquarter[s]" of the business (Pet. App. 23a). Although neither the Tax Court nor the court of appeals (in accepting this rationale) remarked upon the fact, this "headquarters" analysis is similar to the "nerve center" analysis that courts have sometimes employed under 28 U.S.C. 1332(c)(1) to conclude, for diversity jurisdiction purposes, that a corporation's "principal place of business" is at "the company's headquarters or home office" (1 *Moore's Federal Practice*, *supra*, at 800.106; see *Scot Typewriter Co.* v. *Underwood Corp.*, 170 F. Supp. 862, 865 (S.D.N.Y. 1959)). The "nerve center" test, however, has proper application only when a corporation has "far-flung and possibly varied activities carried on substantially in several states. With activities so dispersed, there is no single state in which activities dominate so as to justify the label 'principal.' * * * [T]here is a clear majority view that the [nerve center] test ought to be limited to such situations." 1 *Moore's Federal Practice*, *supra*, at 800.108.

The more generally applicable test under 28 U.S.C. 1332(c)(1) is the "place of operations" test which—like the "focal point" test formerly applied by the Tax Court under Section 280A—looks "not [to] the nerve center, but [to] the place where the corporate activities or operations are carried out." 1 *Moore's Federal Practice*, *supra*, at 800.111; see *Inland Rubber Corp.* v. *Triple A Tire Service, Inc.*, 220 F. Supp. 490,

The court of appeals accepted this rationale and incorporated it as the basis for its decision (*id.* at 5a).

The language and history of Section 280A do not permit these conclusions to stand. (i) Since almost *any* business may require an office of some type, if the mere fact that an office is "essential" to the business made the office "the principal place of business," the statute would be largely meaningless. (ii) The fact that a "substantial" amount of time is spent in the office also cannot be sufficient in determining "the principal place of business" when, as in this case, a *greater* amount of time is spent conducting the more important, income-earning activities of the business at another location.[13] Such a view deprives the statu-

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492-494 (S.D.N.Y. 1963). When the headquarters of a corporation is in one State, but its "physical operation [is] wholly or predominantly in another state, most courts have agreed with *Inland Rubber* that the latter state is the situs of the corporation's principal place of business." 1 *Moore's Federal Practice*, *supra*, at 800.112 & n.9 (citing cases).

Under 28 U.S.C. 1332(c)(1), "[a]s a general rule, the determination of a corporation's principal place of business ought to emphasize the business *activities* or *operations* rather than policy-making or executive decisionmaking." 1 *Moore's Federal Practice*, *supra*, at 800.116. This conclusion under the diversity jurisdiction statute is even more appropriate under Section 280A, since Congress designed the latter statute specifically to curtail a preexisting abuse by requiring that the *office* be the principal place of the *business* for the costs of the home office to be deductible. If Congress meant to accomplish what the courts construed Section 280A to mean in this case, the statute would allow deduction for the costs of the "principal office of the business" rather than for an office that is "the principal place of business" (26 U.S.C. 280A (c)(1)(A)).

[13] The court of appeals erred in this regard in relying (Pet. App. 5a-6a) on Section 1.280A-2(b)(3) of the Proposed In-

tory word "principal" of its ordinary meaning. See pages 15-16, *supra*. (iii) The fact that no other office is "available to perform the office functions" of the business (Pet. App. 24a; see *id.* at 5a) is simply irrelevant under the statute. A home office *could* be

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come Tax Regulations (26 C.F.R.), 45 Fed. Reg. 52,399 (1980), as amended, 48 Fed. Reg. 33,320 (1983), which would, in some circumstances, allow traveling salesmen to deduct "home office" expenses if they spend substantial amounts of time doing paperwork at home. As the court of appeals itself noted (Pet. App. 6a), it is well settled that proposed regulations are not binding on the courts or on the Commissioner. See, *e.g.*, *Estate of Leavitt* v. *Commissioner*, 90 T.C. 206, 218 (1988), aff'd, 875 F.2d 420 (4th Cir.), cert. denied, 493 U.S. 958 (1989); *Garvey, Inc.* v. *United States*, 1 Cl. Ct. 108, 118 (1983), aff'd, 726 F.2d 1569 (Fed. Cir. 1984).

In any event, the proposed regulation does not support the Fourth Circuit's decision. As pointed out by dissenting Judge Phillips, traveling salesmen "spend more time on the road than in their home offices, [but] they may spend more time at their home offices than in any one particular place that they sell goods" (Pet. App. 10a-11a n.5). In this respect, the proposed traveling salesmen regulations appear to represent an example of the "nerve center" approach to determining the principal location of a business (see note 12, *supra*). But that approach (and the proposed regulations) are not applicable in situations such as the present case where respondent, in addition to spending the majority of his time at the three hospitals, spent far more time at Suburban Hospital alone than he did at his home office. As Judge Phillips stated, his office "is not the base for his business in the same way that it would be for a salesperson" (Pet. App. 10a-11a n.5). Neither the proposed regulation nor the "nerve center" theory (see note 12, *supra*) can support the conclusion of the court below that the home office of a self-employed individual may constitute his "principal place of business" even though he spends the majority of his time and performs his income-earning functions at another location.

"the principal place of business" even when another office is also used in the business, if that other office is not the principal location of the business.[14] Moreover, Congress considered and expressly rejected a proposal that would have allowed a home office deduction under Section 280A in circumstances where "the employer provides no office or fixed location for the use of the employee" (S. Rep. No. 938, *supra*, at 148). See page 14, *supra*. Since Congress rejected that view, it should not be judicially engrafted onto the statute. See *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987).

The test applied by the court of appeals in this case construes the statutory language, "the principal place of business," as if it read "the principal office of the business." That judicial gloss has no basis in the text or history of the statute. As Chief Judge Nims noted in dissent in the Tax Court, the decision in this case interprets the statute to reach precisely the result that Congress set out to correct in enacting Section 280A, for it returns to the rejected view that the costs of maintaining a home office that is appropriate and helpful to the business may be deducted (Pet. App. 29a). The test applied by the lower courts ignores the comparative inquiry that the statute requires as to the relative importance to the business of the various activities performed at each of several business locations, to determine *which* location is "the principal" place of business.

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[14] For example, in *Weissman* v. *Commissioner*, 751 F.2d at 516, the court held that the home office of a college professor was his principal place of business even though his employer provided him with a shared, on-campus office space and library facilities.

2. *Suburban Hospital Was The Principal Place Of The Taxpayer's Business In This Case*

Conducting the comparative inquiry that Section 280A requires, it becomes apparent that, in terms of both the time spent and the importance of the activities performed, respondent's principal place of business was Suburban Hospital, not the spare room at his home that he used as an office. Respondent spent the majority of his working time (approximately 30 to 35 hours per week) at the three hospitals where he administered anesthesia to patients during surgery and ministered to them after surgery. He spent the greatest single segment of time (from 24 to 28 hours per week) devoted to the practice of his profession at Suburban Hospital. He spent far less of his time (from 2 to 3 hours a day) in an office at his home performing administrative tasks related to his medical practice.

By any standard, Suburban Hospital was respondent's "principal place of business." The operating room and the recovery room were the locations where respondent practiced medicine, generated fees, and spent the greatest single segment of his working time. The essence of respondent's profession is the preparation for surgery, the administration of anesthesia to patients during surgery, and the care of patients immediately after surgery. These are tasks that cannot be performed (and that respondent did not perform) anywhere but at a hospital. It is true that respondent also spent a lesser number of hours each week in his home office performing various tasks that were related to, and required for, his practice of medicine. The critical fact remains, however, that respondent spent the majority of his time, and performed his most important income-earning activities, minister-

ing to patients at hospitals, and principally at Suburban Hospital.[15] As the Tax Court observed in *Baie* v. *Commissioner*, even though the taxpayer's home may be *a* place of business, it must be "the principal" place of his business for the deduction to be available; the courts have no "liberty to 'bend' the law" or to ignore its plain requirements. 74 T.C. at 110.

What the statute requires in determining whether a home office is "the principal place of business" is a comparative analysis of the places where the taxpayer carries on his trade or business. The deduction for "home office" expenses is permitted under the statute only when that office is the *most* important location at which the taxpayer performs his trade or business. See *Cadwallader* v. *Commissioner*, 919 F.2d 1273, 1275 (7th Cir. 1990) ("the taxpayer must show that [the home office] is his *principal* place of business, not just a cozy den in which he grades exam papers in the evening"). As Judge Phillips correctly noted in his dissent (Pet. App. 8a), "the term 'principal place of business' compels an inquiry directed to that specific question—which is the *one* that is 'principal.' Otherwise Congress could have used language such as 'essential place of business' or 'necessary place of business.'"[16] An exclusive focus on

[15] The Tax Court majority acknowledged (Pet. App. 18a) that, under the "focal point" approach that the court previously had used in determining a taxpayer's "principal place of business," Suburban Hospital was respondent's "principal place of business." See *Pomarantz* v. *Commissioner*, *supra*; *Anderson* v. *Commissioner*, 44 T.C.M. (CCH) 1305, 1308 (1982) ("the principal place of business" of nurse anesthetist was the hospitals where he administered anesthesia to patients, rather than a home office used to bill patients).

[16] The test adopted by the courts below does no more than restate Section 162(a), which allows a deduction only for

the nature of the administrative activities performed in respondent's office at home—without an assessment of the time spent at the several locations of respondent's business or of the relative importance of these activities—ignores the statutory requirement that the various places of business be compared to determine which is "the principal" one.

The approach taken by the courts below is manifestly at odds with the comparative analysis required by the Second and Seventh Circuits (in *Weissman*, *Drucker*, and *Meiers*) and by the terms of Section 280A.[17] By contrast, on facts that are not distin-

expenses that constitute ordinary and necessary expenses of the taxpayer's trade or business. See, *e.g.*, *Welch* v. *Helvering*, 290 U.S. 111, 113 (1933); *Commissioner* v. *Tellier*, 383 U.S. 687, 689 (1966). In enacting Section 280A, however, Congress specifically imposed more stringent requirements, in addition to the fundamental requirements of Section 162(a), on the deduction of expenses incurred by a taxpayer in maintaining an office in his home. See H.R. Rep. No. 658, *supra*, at 160; S. Rep. No. 938, *supra*, at 147.

[17] In many, and perhaps most, cases, a taxpayer will spend the greater part of his time where he performs his most significant work, as is true in this case. As a general rule, the location of an individual's business activities or operations, rather than of his administrative functions, would normally best define "the principal place" of his business. See 1 *Moore's Federal Practice*, *supra*, at 800.116.

We doubt, however, that any universal formula can be devised that will unfailingly designate "the principal place of business" in every case. See 1 *Moore's Federal Practice*, *supra*, at 800.117. Thus, we do not question that the amount of time spent working at various locations, in addition to the type of work performed at those locations, is entitled to some consideration in determining the "principal place" of a taxpayer's business. The significance of time, however, is not necessarily determinative, and for that reason we question the conclusion reached in cases such as *Drucker*, where the court held that a home practice area is "the principal place

guishable from those of the present case, the Ninth Circuit held in *Pomarantz* v. *Commissioner*, 867 F.2d at 497, that the home office of an emergency care physician was not his "principal" place of business.[18] In *Pomarantz*, the physician treated patients at a hospital, where he spent 33 to 36 hours per week. The hospital did not provide the taxpayer with a private office. The taxpayer maintained a home office where—like respondent—he kept his medical library, business records, and patient charts. He spent 150 to 250 hours per year in his home office reading pub-

of business" of a musician. If a taxpayer's business consists of performing in an orchestra, we do not doubt that any ordinary and necessary expenses that he incurs for practice and other preparation for performance would ordinarily constitute deductible business expenses. But that does not mean that a home practice room is "the principal place of business" for a concert musician even if, as is the case in many realms of activity, more time is spent in preparation than in assembled rehearsal or performance.

For the performer or entrepreneur, as well as for the scholar, it seems important to keep in mind that by permitting the deduction only for certain "business" uses of the home, Congress required that the deduction relate to activities designed to earn a profit. See, *e.g.*, *Brook, Inc.* v. *Commissioner*, 799 F.2d 833, 839-840 (2d Cir. 1986); *Zell* v. *Commissioner*, 763 F.2d 1139, 1142 (10th Cir. 1985); *Gajewski* v. *Commissioner*, 723 F.2d 1062, 1065 (2d Cir. 1983), cert. denied, 469 U.S. 818 (1984). Since a "business" under the Code must be an activity designed to produce income, the principal place of a "business" should ordinarily refer to the principal place where income is earned. The "focal point" test previously applied by the Tax Court properly encapsulates that principle.

[18] The court of appeals majority did not even cite *Pomarantz*, much less attempt to distinguish that case, even though Judge Phillips pointed out in dissent (Pet. App. 10a) that the analysis of *Pomarantz* should be controlling in this case.

lications and used the office for other medically-related tasks, such as reviewing laboratory test results and X-rays. The Tax Court in *Pomarantz* concluded that the hospital, rather than the taxpayer's home office, was his "principal place of business." The Ninth Circuit affirmed, noting that the taxpayer "consistently spent more time on duty at the hospital than at home" and "[t]he essence of his profession [was] the hands-on treatment of patients," which he did only at the hospital. *Ibid.*

The same analysis, and the same conclusion, apply to this case.[19] The same factors that required the conclusion that the doctor in *Pomarantz* did not have his principal place of business at home are also present here: in terms of both the time spent and the importance to the business of the activities conducted, respondent's business is centered at the hospitals where he practices medicine, not in his home office.

3. *The decision of the court of appeals expands the availability of the "home office" deduction beyond that intended by Congress*

The analysis applied by the court of appeals in this case would vastly expand the class of taxpayers

[19] The Tax Court majority in the present case attempted to distinguish its prior decision in *Pomarantz* on the ground that the taxpayer in that case "spent an insubstantial amount of time in his home office" (Pet. App. 22a). As Judge Rüwe noted in his dissent, however, neither the Tax Court nor the court of appeals "found that Dr. Pomarantz spent an insubstantial amount of time in his home office. The Ninth Circuit simply observed that Dr. Pomarantz 'spent *more* time on duty at the hospital rather than at home'" (Pet. App. 39a). The significant conclusion that was the basis for the decision in *Pomarantz* was that the taxpayer spent *more* time working at the hospital, where he performed his most important functions, than he did at home.

eligible to claim a deduction for "home office" expenses. Many thousands of individuals perform "substantial" work at home that is "essential" to their business, but spend most of their time and perform their most important work elsewhere.[20] All that appears necessary, under the decisions below, for an individual to deduct "home office" expenses, is that he have no other location available where he can perform the necessary administrative functions of his business.

But Congress made a deliberate decision in enacting Section 280A to preclude deduction of "home office" expenses that otherwise would qualify as "ordinary and necessary" business expenses deductible under Section 162(a). Under the more stringent standards of Section 280A, the home office must con-

[20] For example, under the standard adopted by the courts in this case, a teacher who lacks effective after-hours access to school facilities could contend that he is entitled to deduct the expenses of maintaining an area at home that is exclusively used on a regular basis for grading papers, or planning lessons, or speaking on the telephone with parents and students, even though in terms of both time and importance the teaching profession is centered in the classroom and even though only minor incremental costs are incurred in maintaining an office at home. In *Denison* v. *Commissioner*, 30 T.C.M. (CCH) 1074 (1971), which was decided before Section 280A was enacted, teachers were permitted a home office deduction when they performed substantial non-classroom duties at home in connection with their employment. See also *Bodzin* v. *Commissioner*, 509 F.2d 679, 681 (4th Cir.), cert. denied, 423 U.S. 825 (1975); *Hall* v. *United States*, 387 F. Supp. at 613. These decisions were examples of the abuse of the home office deduction that Congress sought to overrule in enacting Section 280A. See H.R. Rep. No. 658, *supra*, at 160; S. Rep. No. 938, *supra*, at 147; Staff of Joint Committee on Taxation, 94th Cong., 1st Sess., *General Explanation of the Tax Reform Act of 1976*, at 151 (Jt. Comm. Print 1976).

stitute the taxpayer's "principal place of business" for these expenses to be deductible. The decision in this case defeats the central purpose of the statute by permitting the deduction of "home office" expenses when the home office is "essential" to the taxpayer's trade or business, even if it is not the "principal" location of the business.

CONCLUSION

The judgment of the court of appeals should be reversed.

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